BEFORE THE IOWA BOARD OF MEDICINE

****

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

PATRICIA A. ALLEN, D.O., RESPONDENT

FILE Nos. 03-02-003 & 03-04-149

****

TERMINATION ORDER

****

Date: November 7, 2012.

1. Respondent was issued Iowa medical license no. 02900 on November 3, 1994.

2. Respondent's Iowa medical license will next expire on March 1, 2014.

3. The Board has jurisdiction pursuant to Iowa Code Chapters 147, 148 and 272C.

4. On December 26, 2006, the Board filed a Statement of Charges against Respondent alleging professional incompetence in violation of Iowa law.

5. On March 27, 2007, a hearing was held before a three member panel of the Board. On April 30, 2007, the Board issued a Proposed Decision of the Panel. The panel concluded that Respondent demonstrated a substantial lack of knowledge or ability to discharge professional obligations with the scope of her practice and has substantially deviated from the standards of learning and skill ordinarily possessed and applied by other physicians and surgeons in the state of Iowa acting in the same or similar circumstances in violation of Iowa law. Under the terms of the Proposed Decision of the Panel, Respondent was issued a Citation and Warning for failing to conform to the prevailing standard of care in her anatomic pathology practice in Iowa. Respondent was also restricted from practicing osteopathic medicine and surgery in the state of Iowa unless and until she completes a Board-approved remediation program.

6. On May 25, 2007, Respondent filed an Appeal of Proposed Decision of the Board.

7. On September 13, 2007, an appeal hearing was held before the Board. On October 15, 2007, the Board issued a Final Order of the Board on Appeal. The Board concluded that the preponderance of the evidence established that Respondent demonstrated a substantial lack of knowledge or ability to discharge professional obligations with the scope of her practice and has substantially deviated from the standards of learning and skill ordinarily possessed and applied by other physicians and surgeons in the state of Iowa acting in the same or similar circumstances in violation of Iowa law. Under the terms of the Final Order of the Board of Appeal, Respondent was issued a Citation and Warning for failing to conform to the prevailing standard of care in her anatomic pathology practice in Iowa. Respondent was also restricted from practicing osteopathic medicine and surgery under her Iowa medical license until she submits and obtains Board approval of a formal educational plan with an educational preceptor, designed for Respondent by the Center for Personalized Education for Physicians (CPEP). The educational plan must address all areas of demonstrated need identified in the assessment. Upon Board approval of the remediation plan, Respondent shall be placed on probation for a period of five (5) years subject to certain terms and conditions.

8. On November 7, 2007, the Board voted to approve Respondent's formal educational plan, terminated the restriction from practicing osteopathic medicine and surgery under her Iowa medical license and placed her on probation for a period of five (5) years subject to Board monitoring.

9. Respondent completed the terms of her Board-approved remediation plan and on November 7, 2012, Respondent completed the period of probation.

THEREFORE IT IS HEREBY ORDERED: that the terms and conditions of Respondent's probation are terminated and Respondent's Iowa medical license is returned to its full privileges, free and clear of all restrictions.

This Order is issued by the Board on November 7, 2012.

Colleen K. Stockdale MD MS

Colleen K. Stockdale, M.D., M.S., Chairwoman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686

BEFORE THE IOWA BOARD OF MEDICINE

****

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

PATRICIA A. ALLEN, D.O., RESPONDENT

FILE NOs. 03-02-003 & 03-04-149

****

TERMINATION ORDER

****

1. Respondent was issued Iowa medical license no. 02900 on November 3, 1994.

2. Respondent's Iowa medical license is currently active and will next expire on March 1, 2008.

3. On December 26, 2006, the Board filed formal disciplinary charges against Respondent alleging she engaged in professional incompetency in the practice of medicine.

4. On October 15, 2007, the Board issued a Final Order of the Board on Appeal. The Board restricted Respondent from practicing osteopathic medicine and surgery under her Iowa medical license until she received Board approval of a formal education plan with an educational preceptor, designed for Respondent by the Center for Personalized Education for Physicians (CPEP).

5. On November 7, 2007, the Board voted to approve Respondent's formal education plan with an educational preceptor, designed for Respondent by the Center for Personalized Education for Physicians (CPEP).

THEREFORE the Board hereby terminates Respondent's restriction from practicing osteopathic medicine and surgery under her Iowa medical license established in the October 15, 2007, Final Order of the Board on Appeal.

November 7, 2007.

Yasyn Lee, M.D., Chairperson
Iowa Board of Medical Examiners
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST	)	FILE NO. 03-02-003,03-04-149 DIA NO. 06DPHMB030
PATRICIA A. ALLEN, D.O.	)	FINAL ORDER OF THE BOARD ON APPEAL

Date: October 15, 2007.

On April 30, 2007, a panel of the Iowa Board of Medicine (Board) issued a Proposed Decision in the above-captioned case. The Respondent filed a timely Notice of Appeal from the Proposed Decision. An Order Setting Briefing Schedule and Rehearing was issued on June 29, 2007. Respondent's Application for Extension of Time was granted; her Application for Continuance was denied. Respondent filed a Brief on August 10, 2007. The State filed a Notice of No Brief on August 30, 2007. Respondent filed a Request for Modification of Ruling on August 30, 2007.

The appeal hearing was held before the Board on September 13, 2007 at 2:30 p.m. The following Board members were present for the hearing: Yasyn Lee, M.D., Chairperson; Dana Shaffer, D.O.; Siroos Shirazi, M.D.; Blaine Houmes, M.D.; Rod Zeitler, M.D.; Janece Valentine, Tom Drew, and Sally Schroeder, public members. The Respondent was represented by attorney Michael Sellers. The state was represented by Theresa O'Connell Weeg, Assistant Attorney General. Margaret LaMarche, Administrative Law Judge, assisted the Board in the hearing and was asked to draft the Final Order, in conformance with their deliberations.

After reviewing the record made before the panel, Respondent's briefs and additional exhibits, and hearing oral arguments, the Board deliberated its decision in closed session, pursuant to Iowa Code section 21.5(1)(f). While the Board did not agree with Respondent's contention that some of the panel's findings of fact were inaccurate, the Board concluded that Findings of Fact 5 and 6 should be redrafted to clarify the chronology following the receipt of the complaints initiating the investigation. Finding of Fact 15 was added to incorporate CPEP's letter of September 5, 2007. Finally, the Board concluded that some

modifications should be made to the panel's proposed sanction.

THE RECORD

The record includes the entire record made before the panel; the panel's Proposed Decision; the Notice of Appeal; Order Establishing Briefing Schedule; Respondent's Application for Extension of Time; Application for Continuance, Resistance, and Ruling Denying Continuance; Brief in Support of Respondent's Appeal From The Panel Decision; State's Notice of No Brief; Request For Modification of Proposed Ruling; and Respondent's Appeal Exhibits 1-6.

FINDINGS OF FACT

Respondent Education, Licensure and Current Practice

1. Respondent graduated from Kirksville College of Osteopathic Medicine in Kirksville, Missouri in 1979, completed a rotating internship at Kirksville Osteopathic Hospital in 1980, and completed a four-year anatomic pathology and laboratory medicine residency at Oklahoma Osteopathic Hospital in Tulsa in 1985. Respondent is certified by the American Osteopathic Board of Pathology Sub-Specialty Boards of Laboratory Medicine and Anatomic Pathology. (Testimony of Respondent; Respondent Exhibit B; State Exhibit 29)

2. Respondent was issued license number 02900 to practice medicine and surgery in the state of Iowa on November 3, 1994. Respondent's Iowa medical license is active and will next expire on March 1, 2008. Respondent is also licensed in Ohio, Oklahoma, Missouri, Minnesota, and Pennsylvania, and has an inactive license in Oregon. (State Exhibit 3; Respondent Exhibit B)

3. Respondent practiced pathology at the Greater Community Hospital in Creston, Iowa from March 1, 1995 to September 23, 2005 and at Alegent Health Mercy Hospital in Corning, Iowa from August 5, 1996 until December 31, 2003. After Respondent left Creston because the hospital was downsized, she had locum tenens pathology practice in various cities in Oklahoma, Iowa, Missouri, and Minnesota from September 2005 until March 2006. (Respondent Exhibits A-D; Testimony of Respondent)

4. Since March 15, 2006, Respondent has practiced pathology at Jackson Community Memorial Hospital in Altus, Oklahoma. Although Respondent is the only pathologist at Jackson Community Memorial Hospital, she is practicing as part of an eleven-physician pathology group, Affiliated Pathologists, P.A., whose physicians are located at various hospitals in Oklahoma and Texas. (Respondent Exhibits A-D; Testimony of Respondent; Dr. Ken Ford)

Patient #1

5. In December 2001, the Board received a complaint from Patient #1, who alleged that Respondent misinterpreted her four cervical biopsies in July 2001 by reporting them as "no cells suspicious of cancer of any form."[1] Patient #1 further stated that on September 10, 2001, she was diagnosed with adenocarcinoma of the cervix and invasive adenocarcinoma of the cervix with wide surgical margins. On October 29, 2001, the patient had a radical hysterectomy. (State Exhibit 16)

On January 27, 2005, the Board subpoenaed medical records for Patient #1 from January 1, 2001 through December 31, 2001. (State Exhibit 22, pp. 18-19) These records were submitted to a peer review committee, who observed that Respondent had previously reviewed biopsy slides for Patient #1 in 1997. On July 5, 2005, the Board issued a subpoena for the 1997 slides and Respondent's 1997 biopsy reports for Patient #1. (State Exhibit 22, pp. 46-50)

a. 1997 biopsies. Patient #1 had endocervical curettage and cervical biopsies performed on October 22, 1997. The tissue was sent to Southwest Iowa Pathology Associates in Creston, Iowa, where it was processed in the usual fashion. Microscopic slides were prepared for Respondent to review and interpret. Respondent generated a surgical pathology report dated October 24, 1997. Respondent's pathologic impression was:

> Endocervical curettements, unremarkable
> Squamous metaplasia, cervical biopsy, 6 o'clock
> Chronic cervicitis, cervical biopsy, 12 o'clock.

(State Exhibit 22, p. 48)

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[1] The complainant was inaccurate and Respondent did not use the words "no cells suspicious of cancer in any form" in her pathology report. (State Exhibit 22, pp. 28-29)

b. 2001 biopsies. Respondent's culposcopy biopsy report for Patient #1, dated July 27, 2001, does not use the language "no cells suspicious of cancer of any form," as reported by the patient in her complaint, but rather states:

> Endocervical and 4 o'clock specimens are quite superficial and composed primarily of blood and endocervical epithelial cells. The 12 o'clock specimen presents an unremarkable fragment of cervical tissue with both portio vaginalis and endocervical glands. A fragment of portio vaginalis with some koilocytoic atypia is seen in the 8 o'clock specimen. The specimens are generally quite superficial and fragmented. Evaluation is therefore limited."

(State Exhibit 21, p. 17; Exhibit 22, p. 29)

On July 27, 2001, Respondent telephoned the referring physician for Patient #1. According to the physician's file note, Respondent verbally informed the physician that Patient #1's "colpo was lacking needed tissue depth-suggests we repeat for more tissue." The patient's physician documented that he referred the patient to an OB-GYN for a LEEP procedure on September 7, 2001. The LEEP procedure led to the decision to perform the radical hysterectomy on October 29, 2001. (Testimony of Respondent; State Exhibit 22, p. 30; Respondent Exhibit J)

Patient #2

6. In March 2004, the Board was notified that a malpractice claim had been filed against Respondent alleging that she erroneously diagnosed ductal carcinoma in situ when she examined tissue specimens following a left breast biopsy and again when she examined tissue from a left breast mastectomy. Respondent was notified of the complaint and provided a written response to the Board. The complaint was referred for investigation. The malpractice claim was eventually settled on behalf of Respondent with a monetary payment to the patient (hereinafter, Patient #2). (State Exhibits 3-12)

On October 22, 2003, Respondent examined a left breast tissue specimen for Patient #2 and issued an Anatomic Pathology Report.

a. Respondent identified ductal carcinoma in situ, solid variant of approximately 0.4 cm and microinvasion less than 0.1 cm. Respondent reported the findings were compatible with at least a T1 stage for the DCIS and T1 mic stage for the microinvasive tumor. (State Exhibit 12, p. 68) The patient met with her personal physician and a radiation oncologist. The radiation oncologist felt Patient #2 was a good candidate for conservative management (lumpectomy), but the patient opted for mastectomy instead.

b. In November 2003, Patient #2 had a left modified radical mastectomy. Respondent's pathology report on the surgical specimens, dated November 13, 2003, stated focal residual ductal carcinoma in-situ, mixed solid and cribriform variants, eight axillary lymph nodes plus one additional lymph node, benign reactive. (State Exhibit 12, p. 7) In December 2003, Patient #2 consulted an oncologist, who recommended Tamoxifen or Arimidex as a preventative for recurrence of breast cancer. The oncologist ordered an ERPR receptor assay, which was performed by Dr. Patrick Bogard at Agelent Health Care Laboratory in Corning, Iowa. Dr. Bogard found no evidence of definite duct carcinoma in-situ. Dr. Bogard performed ERPR receptor assay using blocks, not the slides used by Respondent. (Exhibits 3, 4, 12)

c. Respondent's slides were then sent to pathologist Dr. Soundararajan at Creighton Medical Laboratories. On January 21, 2004, Dr. Soundararajan reported her findings on the left breast biopsy as "Breast tissue with florid ductal hyperplasia and intraductal papilloma-no evidence of carcinoma identified." For the left breast and lymph nodes, mastectomy and axillary node dissection, Dr. Soundararajan found "Breast tissue with ductal hyperplasia, Biopsy site changes present, eighteen lymph nodes negative for carcinoma." Dr. Soundararajan added the following comment: "Florid hyperplasia and papillomas in the breast are difficult lesions on core biopsies in view of hypercellularity and sclerosed stroma mimicking invasive carcinoma. The presence of myoepithelical cells continuously around the hyperplastic cells are demonstrated by immunohistochemical stains." (Exhibit 12, pp. 76-77)

Peer Review

7. The Board referred the complaints concerning Patients 1 and 2 to a peer review committee consisting of two board-certified pathologists, each with significant experience with surgical and cytological pathology specimens. The peer reviewers independently reviewed a total of 71 microscopic glass slides for the two patients, based on the standard of care for a pathologist practicing surgical and cytological pathology in a laboratory in Iowa. They prepared a written report, ultimately concluding that the interpretations rendered by Respondent reflect a "substantial lack of a routinely practiced knowledge base" and that Respondent's deficiency in knowledge base and skills pose a serious threat to patients.

a. With respect to Patient #1, the peer reviewers reviewed the endocervical curettage and cervical biopsies performed on 10/22/97. Both peer reviewers disagreed with Respondent's interpretation of all three specimens and offered a different interpretation. Both peer reviewers would have recommended that the attending clinician further evaluate the cervix and endocervix by obtaining additional tissue from these areas to assess the extent of the lesion present. Both peer reviewers concluded that Respondent failed to meet the standard of care for pathology practice. They concluded that Respondent lacked the knowledge to recognize the pattern of the histologic and cytologic features of glandular dysplasia and therefore was unable to inform the clinician in a knowledgeable way about the extent and nature of the patient's diagnosis.

The peer reviewers also disagreed with Respondent's interpretation of the endocervical curettage and cervical/endocervical biopsies that followed in 2001. Both interpreted the slides differently and concluded that Respondent failed to meet the standard of care by failing to recognize the salient features of dysplasia present on the microscopic slides. Both peer reviewers would have recommended further evaluation of the cervix and endocervix to possibly include Loop Electrosurgical Excision Procedure (LEEP) or cold knife conization with marginal assessment.

b. With respect to Patient #2, the peer reviewers both disagreed with Respondent's interpretation of the initial breast specimen as ductal carcinoma in situ (DCIS). Their interpretation was "Proliferative, non-atypical

fibrocystic change with florid intraductal epithelial hyperplasia and intraductal papillomatosis (a benign diagnosis)." The peer reviewers concluded that Respondent lacks the knowledge to discern this benign lesion from the malignant lesion she reported of DCIS. The patient was subjected to a left mastectomy for DCIS and lost a breast and axillary tissue with nodes based on an incorrect malignant diagnosis. In the opinion of the peer reviewers, Respondent failed to meet the standard of care for a pathologist. (State Exhibits 24, 25)

Competency Evaluation

8. On April 27, 2006, the Board found probable cause to order Respondent to undergo a Board-approved confidential comprehensive clinical competency evaluation, pursuant to Iowa Code section 272C.9(1)(2005). Respondent submitted to an evaluation at the Center for Personalized Education for Physicians (CPEP) on July 20-21 and on September 8, 2006. The assessment included three clinical interviews with board certified pathologists based on review of anatomic pathology slides from the consultants' practices. The case selections were based on a description of Respondent's practice and pathology reports that she submitted from her practice. The evaluation addressed only Respondent's practice of anatomic pathology and evaluated medical knowledge, clinical reasoning, application of knowledge to practice, documentation, and communication. At the conclusion of the evaluation, CPEP prepared a detailed written report. (State Exhibits 28, 29)

9. CPEP concluded that overall, Respondent's knowledge is broad but superficial. Her clinical judgment and reasoning varied from good to poor. Her communication skills were effective. Her documentation in patient reports was adequate, with room for improvement. No health conditions were identified that should interfere with her practice, and her cognitive function screen was within normal limits.

In conclusion, CPEP recommends that Respondent participate in structured, individualized education to address the following identified areas of need:

Knowledge

- Overall ability to distinguish benign, premalignant and malignant lesions;
- Skin and soft tissue:

  - Overall familiarity in this area;
  - Malignant Melanoma;
  - Keratoacanthoma versus SCC;
  - Malignant sarcoma;
  - Leiomyosarcoma;
  - Lipoma versus liposarcoma;
- Head and neck;
  - Overall familiarity in this area;
  - Lingual tonsil;
  - Wegener's granulomatosis;
  - Small cell carcinoma versus squamous cell carcinoma;
  - Salivary gland tumors;
- Bone: osteomyelitis
- Breast
  - Atypical ductal hyperplasia versus ductal carcinoma in situ;
  - Identification of invasion in breast cancer specimens;
- Germ cell tumors, including germinoma;
- Schwannoma;
- Gastrointestinal system;
  - Characteristics to differentiate between dysplasia and adenocarcinoma;
  - Infiltrating gastric carcinoma;
  - Hyperplastic colonic polyp;
- Prostate, atypia versus normal;
- Cervix:
  - HPV testing and clinical implications;
  - Adenocarcinoma in situ versus atypical squamous metaplasia;
- Uterus:
  - Overall familiarity in this area;
  - Sarcomas of the uterus;
  - Grading system for endometrial adenocarcinoma;
  - Distinguishing features of endometrial hyperplasia, atypia, and dysplasia.

Judgment

- Development of self-confidence;
- Minimize reliance on her colleagues and consultants, as appropriate;
- Logical decision-making in her practices.

CPEP further recommended:

- **Supervised Clinical Experience:** Respondent should participate in a clinical experience, either at a pathology lab with a higher volume or through an academic setting, to provide the necessary experience and support as she addresses the areas of demonstrated need.
- **Educational Preceptor:** Respondent should develop a relationship with an experienced educational preceptor in pathology involving regularly scheduled meetings to review cases and documentation, discuss decisions related to those cases, review specific topics, and make plans for future learning.
- **Continuing Medical Education and Self-Study:** Respondent should engage in continuing medical education courses and self-study which include, but are not limited to, the topics indicated in areas of demonstrated need.

(State Exhibit 29)

10. Respondent submitted a detailed ten-page response to the CPEP Assessment report. Respondent raises a number of criticisms of CPEP's approach and conclusions. In part, Respondent felt that CPEP's evaluation methods and approach was unfair or unrealistic. Respondent notes that all pathologists keep reference libraries, which they will consult in difficult or uncommon cases. Respondent felt the reviewers had unrealistic expectations for what information she should have memorized. Respondent felt that several of the cases used by the consulting pathologists were conditions or cases that she would never or only very rarely see in her rural practice. Respondent felt that she was not permitted to control the microscope (light, focus, time spent) sufficiently to allow her to perform well during the evaluation. Respondent felt that her inclination to obtain second opinions from colleagues was unfairly characterized as indecision or lack of confidence. (State Exhibit 29; Testimony of Respondent)

Opinions of Respondent's Colleagues and Expert Witness

11. Dr. Ken Ford, a board certified pathologist practicing in Denton, Texas, is part of Respondent's 11-member pathology group. All high-risk biopsies (e.g., G.I., lymph node, breast, prostate, pigmented skin lesions, and cervical) are reviewed by a second pathologist in the

group. Most of the group's pathologists have at least one colleague at the same location. Although Respondent is the only pathologist located at Jackson Community Memorial Hospital in Altus, she is able to obtain second opinions by submitting slides electronically to other pathologists in the group. Dr. Ford estimates that since Respondent joined their group in March 2006, he and his colleagues have reviewed approximately 500 of Respondent's cases without any significant discrepancies in their findings, aside from some differences in the terminology used. Dr. Ford has not reviewed the charges pending against Respondent in Iowa and has not reviewed CPEP's report. He is not familiar with the details of the malpractice case involving Patient #2. (Testimony of Dr. Ken Ford; Respondent)

12. Dr. Thomas Mulhollan, a board certified pathologist located in Ardmore, Oklahoma, is also part of Respondent's practice group. Dr. Mulhollan has worked with Respondent on occasion to provide a second opinion or review her work, as part of the practice's automatic review process. Dr. Mulhollan has not needed to change or modify any diagnosis made by Respondent. In his opinion, Respondent is very well qualified to perform the pathology activities required of her in a rural Oklahoma practice. Dr. Mulhollan has not reviewed any of the documents in this disciplinary action. (Testimony of Dr. Thomas Mulhollan; State Exhibit 27)

Dr. Melanie Kahn, M.D. and Joy Snell, M.D., are also members of Affiliated Pathologists, P.A. Respondent has also provided locum tenens coverage for Dr. Snell's pathology practice. Both have provided letters of recommendation for Respondent. (Respondent Exhibit E; State Exhibit 27)

13. Dr. J. Frederick Hall performs general surgical pathology work at a hospital in northern Minnesota. Respondent has performed locum tenens work at the hospital, substituting for Dr. Hall or his partner. In Dr. Hall's opinion, Respondent is one of the best locum tenens that the hospital has used. He has heard no complaints concerning her work. (Testimony of Dr. J. Frederick Hall; State Exhibit 26)

14. Dr. Valarie Campbell, M.D. is board certified in anatomic and clinical pathology. For the past five years, Dr. Campbell has been part of a large pathology group in Des Moines that provides pathology services to hospitals in

Des Moines and throughout central Iowa. After Respondent left Creston, Dr. Campbell's group took over pathology services for Greater Community Hospital in Creston, Iowa. Dr. Campbell has recently left her pathology group and will be have a solo pathology practice at Grinnell Regional Hospital.

Dr. Campbell reviewed the Peer Review Report, the CPEP Report and Respondent's written response, and the slides for Respondent's pathology cases for Patients 1 and 2.

a. Dr. Campbell disagrees with the peer review's criticisms of Respondent's findings regarding Patient #1's 1997 endocervical and curettage and cervical biopsies. Dr. Campbell testified that in retrospect, endocervical dysplasia was present, but that this was an evolving diagnosis that was not better understood until the last decade. According to Dr. Campbell, in 1997 this type of lesion was rare, not well-defined, and easily missed. She would have agreed with Respondent's findings at Exhibit 22, p. 48 but would have added "atypical endocervical cells" to paragraph 3 under the microscopic findings. Dr. Campbell testified that diagnosis of cervical glandular cells remains a nebulous area and that it is pretty common for pathologists to miss the diagnosis.

b. With respect to Patient #2, Dr. Campbell felt that it was a very difficult case because the tissue was "very cellular and busy." Dr. Campbell would have deferred to a consultant. Dr. Campbell agreed that Respondent's initial diagnosis affected the patient's decision making in this case. Dr. Campbell viewed this as an error in interpretation.

c. Dr. Campbell found the CPEP evaluation report "alarming." In her opinion, it was clear that the pathologist reviewers used by CPEP had no knowledge of rural Iowa pathology practice. She felt that several of the specimens were uncommon and would never be excised in rural Iowa. Even in Des Moines, Dr. Campbell would have asked for consultation on some of the specimens. In addition, Dr. Campbell knows of no pathologist who has not made at least one major error. She felt it was unfair to discipline Respondent based on the errors in the cases of the two patients. She further felt that a lot of the reviewers' criticisms were matters of semantics that depended upon where the physician received his or her

training. In Dr. Campbell's opinion, the CPEP recommendations are unreasonable. (Testimony of Valarie Campbell, M.D.)

15. On September 5, 2007, CPEP reviewed its prior recommendations for Respondent with respect to supervised clinical experience and preceptor meetings, in light of additional information provided by Respondent concerning the technology available in her current practice setting. Based on this information, CPEP determined that it could develop an Education Plan for Respondent that would integrate a long distance education component allowing Respondent to address her educational needs. (Respondent Appeal Exhibit 5)

CONCLUSIONS OF LAW

Respondent is charged with professional incompetency, pursuant to Iowa Code section 147.55(2), 148.6(2)(g) and (i), 272C.10(2)(2005) and 653 IAC 23.1(2)"c" "d", "e" and "f."

Iowa Code section 147.55(2) provides that a license to practice a profession shall be revoked or suspended when the licensee is guilty of professional incompetency.

Iowa Code section 272C.10(2) provides that a licensing board shall by rule include provisions for the revocation or suspension of a license for professional incompetency.

Iowa Code section 148.6 provides in relevant part:

> **148.6 Revocation.**
>
> 2. Pursuant to this section, the board of medical examiners may discipline a licensee who is guilty of any of the following acts or offenses:
> ...
> g. Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery, or osteopathy in which proceeding actual injury to a patient need not be established;...
> ...

i. Willful or repeated violation of lawful rules or regulation adopted by the board...

653 IAC 23.1 provides in relevant part:

> **653-23.1(272C) Grounds for discipline.** The board has authority to discipline for any violation of Iowa Code chapter 147, 148,...272C or the rules promulgated thereunder. The grounds for discipline apply to physicians...The board may impose any of the disciplinary sanctions set forth in rule 12.25(1), including civil penalties in an amount not to exceed $10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:
> ...
> **23.1(2)** Professional incompetency. Professional incompetency includes, but is not limited to, any of the following:
> ...
> *c.* A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;
>
> *d.* A substantial deviation by the physician from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;
>
> *e.* A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances.
>
> *f.* A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery, or osteopathy in the state of Iowa.

The preponderance of the evidence established that Respondent has violated Iowa Code sections 147.55(2), 148.6(2)(g), 272C.10(2)(2005) and 653 IAC 23.1(2)(c) and (d). As supported by the findings of five board-certified

pathologists (two peer reviewers and three physician reviewers at CPEP), Respondent has demonstrated a substantial lack of knowledge or ability to discharge professional obligations with the scope of her practice and has substantially deviated from the standards of learning and skill ordinarily possessed and applied by other physicians and surgeons in the state of Iowa acting in the same or similar circumstances.

Several pathologists who are or have been colleagues of Respondent provided testimony and/or letters expressing their confidence in Respondent's professional knowledge and abilities. However, none of the colleagues have reviewed the two specific cases that prompted Respondent's referral to CPEP, nor have they reviewed the CPEP assessment report. Dr. Campbell did review the cases involving Patients 1 and 2 and the CPEP report. The majority of Dr. Campbell's disagreements with the peer review report concerned their criticism of Respondent's 1997 pathology report for Patient #1. However, even assuming that Dr. Campbell is correct and that endocervical gland dysplasia was not a widely used or developed diagnosis in 1997, Dr. Campbell conceded that she would not have used the same description as Respondent and would have described the endocervical cells as atypical. With respect to Patient #2, Dr. Campbell did not agree with Respondent's approach. Rather, Dr. Campbell testified that it was a very difficult case, that further tissue should have been obtained, and that she would have sent it out to a consultant.

Dr. Campbell primarily criticized the CPEP evaluation and report because she felt that Respondent was presented with too many types of cases that she would not ordinarily see in a rural practice and because the reviewers unfairly criticized Respondent when she indicated that she would ask for a consultation in a particular case. However, as stated in the report, the reviewer's case selections were made based on a description of Respondent's practice and on the pathology reports that Respondent submitted from her practice. (State Exhibit 29, pp. 2, 4; Exhibit 30)

A careful review of the CPEP report reveals that the reviewers did consider the frequency with which Respondent may encounter certain types of cases. The reviewers approved of consulting textbooks or other reference materials and making referrals to consultants in appropriate cases. Based on its review of the entire record, the Board believed that

the opinions of three practicing pathologists who spent a number of days reviewing cases with Respondent at CPEP, combined with the opinions of the two Iowa peer reviewers, were entitled to substantially more weight than the opinions expressed by Dr. Campbell.

CPEP and the peer reviewers appropriately expected Respondent to be able to demonstrate the general fund of knowledge and appropriate clinical judgment and reasoning expected of a pathologist, regardless of the location where she was practicing. See Estate of Hagedorn v. Peterson, 690 N.W.2d 84, 89 (Iowa 2004) (noting that although the availability of medical knowledge has become more universal across the United States, the "locality rule has retained validity in its other aspects, i.e. "facilities, personnel, services, and equipment reasonably available to the physician continue to be circumstances relevant to the appropriateness of the care rendered by the physician to the patient). CPEP's Assessment Report considered separate extensive clinical interviews by three practicing pathologists covering numerous individual cases. CPEP credited Respondent with a number of correct diagnoses, including several that were difficult for a general pathologist. However, CPEP also found that Respondent demonstrated a lack of recognition of several classic examples of common pathology and an inadequate knowledge base for cases that would not typically be seen in her daily practice. CPEP further found that Respondent showed serious gaps in her knowledge and diagnostic skill when presented with cases of moderate complexity.

In order to address the concerns documented by the peer review report and the CPEP assessment report and in order to protect the public interest, Respondent must be restricted from practicing pathology under her Iowa medical license until she establishes a Board approved remediation plan that addresses the areas of need identified by CPEP. Respondent will then be required to serve a period of probation while she fully complies with all aspects of the approved remediation plan.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondent Patricia Allen, D.O., is hereby **CITED** for failing to conform to the prevailing standard of care in her anatomic pathology practice in Iowa. Respondent is hereby **WARNED** that failure to conform to the prevailing standard of care in the future may result in

further disciplinary action, including revocation of her Iowa medical license.

IT IS FURTHER ORDERED that Respondent Patricia Allen, D.O., is **RESTRICTED** from practicing osteopathic medicine and surgery under her Iowa medical license until she submits and obtains **Board approval of a formal educational plan** with an educational preceptor, designed for Respondent by the Center for Personalized Education for Physicians (CPEP). The educational plan must address all areas of demonstrated need identified in the assessment.

Upon Board approval of the remediation plan, Respondent shall be placed on **probation for a period of five (5) years**, subject to the following terms and conditions:

A. **Monitoring Program:** Respondent shall contact Shantel Billington, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-3654 to establish a Board monitoring program. Respondent shall fully comply with all requirements of the monitoring program.

B. **Recommendations of CPEP and the Board:** Respondent shall fully comply with the Board approved educational plan developed by CPEP, including all recommendations for continuing medical education and self study.

C. **Quarterly Reports:** Respondent shall file sworn quarterly reports attesting to her compliance with all the terms of this Settlement Agreement. The reports shall be filed not later than 1/10, 4/10, 7/10, and 10/10 of each year of her probation.

D. **Board Appearances.** Respondent shall appear before the Board annually or upon request of the Board during the duration of this Order. Respondent shall be given reasonable notice of the date, time and location for the appearances. Said appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(d).

E. **Monitoring Fee.** Respondent shall make a payment of $100 to the Board each quarter for the duration of this Order to cover the Board's monitoring expenses in this matter. The monitoring fee shall be received by the Board with each quarterly report required under this Order. The monitoring fee shall be sent to: Shantel

Billington, Compliance Monitoring, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medicine. The monitoring fee shall be considered repayment receipts as defined in Iowa Code section 8.2.

IT IS FURTHER ORDERED that Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Iowa.

IT IS FURTHER ORDERED, in accordance with 653 IAC 25.33, that Respondent shall pay a disciplinary hearing fee of $75.00. In addition, Respondent shall pay any costs certified by the executive director and reimbursable pursuant to subrule 25.33(3). All fees and costs shall be paid in the form of a check or money order payable to the state of Iowa and delivered to the department of public health, within thirty days of the issuance of a final decision.

Dated this 15th day of October, 2007.

Yasyn Lee, M.D.
Chairperson
Iowa Board of Medicine

cc: Theresa O'Connell Weeg
Office of the Attorney General
Hoover Building
Des Moines, Iowa 50319

Michael Sellers
One Corporate Place
1501 42nd St., Suite 38
West Des Moines, IA 50266-1005

Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of this Decision and Order. 653 IAC 25.31.

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST:	FILE NO. 03-02-003,03-04-149 DIA NO. 06DPHMB030
PATRICIA A. ALLEN, D.O. Respondent	RULING DENYING MOTION FOR CONTINUANCE

08-17-07P01:38 RCVD

On July 27, 2007, Respondent's counsel filed an Application For Continuance of oral arguments on her appeal to the Board from the proposed decision of the panel, which was issued on April 30, 2007. The state filed a Resistance on August 3, 2007. On August 15, 2007, the Board delegated ruling on the motion to the undersigned administrative law judge.

Respondent has filed her appeal brief; the state has agreed to file a responsive brief by August 31, 2007. Respondent has not provided sufficient grounds to justify a continuance of the scheduled oral arguments on September 13, 2007. IT IS THEREFORE ORDERED that the Application for Continuance is DENIED.

Dated this 16th day of August, 2007.

Margaret LaMarche

Margaret LaMarche
Administrative Law Judge
Department of Inspections and Appeals
Lucas State Office Building-Third Floor
Des Moines, Iowa 50319-0083

cc: Theresa O'Connell Weeg
Office of the Attorney General
Hoover Building
Des Moines, Iowa 50319 and by FAX: (515) 281-7551

Michael Sellers
One Corporate Place
1501 42nd St., Suite 380
West Des Moines, IA 50266-1005 and by FAX: (515) 221-2702

Kent Nebel
Iowa Board of Medical Examiners
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686 and by FAX: (515) 281-8641

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST	)	**FILE NO. 03-02-003,03-04-149**
	)	**DIA NO. 06DPHMB030**
	)	
PATRICIA A. ALLEN, D.O.	)	**PROPOSED DECISION**
	)	**OF THE PANEL**

April 30, 2007.

On December 26, 2006, the Iowa Board of Medical Examiners (Board) filed a Statement of Charges against Patricia A. Allen, D.O. (Respondent) alleging professional incompetency, in violation of Iowa Code sections 147.55(2), 148.6(2)(g) and (i), 272C.10(2) (2005) and 653 IAC 23.1(2)(c), (d), (e) and (f). The hearing was initially scheduled for February 7, 2007 but was continued at Respondent's request. Respondent's second continuance motion was denied and later withdrawn.

The hearing was held on March 27, 2007 at noon before the following panel of the Board: Yasyn Lee, M.D., Chairperson; Siroos Shirazi, M.D.; and Paul Thurow, public member. Respondent Patricia Allen appeared and was represented by attorney Michael Sellers. Assistant Attorney General Theresa O'Connell Weeg represented the state. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1) and 653 IAC 25.18(12). The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the panel in conducting the hearing and was instructed to prepare a written decision, in accordance with their deliberations.

THE RECORD

The record includes the Statement of Charges and Confidential Statement of Matters Asserted, Motion for Continuance, Resistance, Ruling Granting Motion for Continuance, Hearing Order, Application for Continuance, Resistance, Order Denying Application for Continuance, testimony of the witnesses, State Exhibits 1-30 (See Exhibit Index for description; Exhibit 30 consists of documents from the web site for the Center for Personalized Education for Physicians (CPEP)) Respondent Exhibits I-K (see Exhibit Index for description; Exhibit K is the curriculum vitae for Valarie L. Campbell, M.D.)

FINDINGS OF FACT

Respondent Education, Licensure and Current Practice

1. Respondent graduated from Kirksville College of Osteopathic Medicine in Kirksville, Missouri in 1979, completed a rotating internship at Kirksville Osteopathic Hospital in 1980, and completed a four-year anatomic pathology and laboratory medicine residency at Oklahoma Osteopathic Hospital in Tulsa in 1985. Respondent is certified by the American Osteopathic Board of Pathology Sub-Specialty Boards of Laboratory Medicine and Anatomic Pathology. (Testimony of Respondent; Respondent Exhibit B; State Exhibit 29)

2. Respondent was issued license number 02900 to practice medicine and surgery in the state of Iowa on November 3, 1994. Respondent's Iowa medical license is active and will next expire on March 1, 2008. Respondent is also licensed in Ohio, Oklahoma, Missouri, Minnesota, and Pennsylvania, and has an inactive license in Oregon. (State Exhibit 3; Respondent Exhibit B)

3. Respondent practiced pathology at the Greater Community Hospital in Creston, Iowa from March 1, 1995 to September 23, 2005 and at Alegent Health Mercy Hospital in Corning, Iowa from August 5, 1996 until December 31, 2003. After Respondent left Creston because the hospital was downsized, she had locum tenens pathology practice in various cities in Oklahoma, Iowa, Missouri, and Minnesota from September 2005 until March 2006. (Respondent Exhibits A-D; Testimony of Respondent)

4. Since March 15, 2006, Respondent has practiced pathology at Jackson Community Memorial Hospital in Altus, Oklahoma. Although Respondent is the only pathologist at Jackson Community Memorial Hospital, she is practicing as part of an eleven-physician pathology group, Affiliated Pathologists, P.A., whose physicians are located at various hospitals in Oklahoma and Texas. (Respondent Exhibits A-D; Testimony of Respondent; Dr. Ken Ford)

Complaint-Patient #1

5. In December 2001, the Board received a complaint from Patient #1, stating that Respondent interpreted four cervical biopsies and reported them as "no cells suspicious

of cancer of any form." A few weeks later, Patient #1 was diagnosed with adenocarcinoma of the cervix and invasive adenocarcinoma of the cervix with wide surgical margins. On October 29, 2001, the patient had a radical hysterectomy. (State Exhibit 16)

The Board contacted Respondent for her response to the complaint. Respondent commented that "no cells suspicious of cancer in any form" does not sound like one of her reports. She would typically report "Class I gynecologic smear (BS) within normal limits." (State Exhibits 17-20) Respondent's culposcopy biopsy report for Patient #1, dated July 27, 2001, states that the:

> Endocervical and 4 o'clock specimens are quite superficial and composed primarily of blood and endocervical epithelial cells. The 12 o'clock specimen presents an unremarkable fragment of cervical tissue with both portio vaginalis and endocervical glands. A fragment of portio vaginalis with some koilocytoic atypia is seen in the 8 o'clock specimen. The specimens are generally quite superficial and fragmented. Evaluation is therefore limited."

(State Exhibit 21, p. 17)

Complaint- Patient #2

6. In March 2004, the Board was notified that a malpractice claim had been filed against Respondent alleging that she erroneously diagnosed ductal carcinoma in situ when she examined tissue specimens following a left breast biopsy and again when she examined tissue from a left breast mastectomy. Respondent was notified of the complaint and provided a written response to the Board. The complaint was referred for investigation. The malpractice claim was eventually settled on behalf of Respondent with a monetary payment to the patient (hereinafter, Patient #2). (State Exhibits 3-12)

a. Respondent identified ductal carcinoma in situ, solid variant of approximately 0.4 cm and microinvasion less than 0.1 cm. Respondent reported the findings were compatible with at least a T1 stage for the DCIS and T1 mic stage for the microinvasion tumor. The patient met with her personal physician and a radiation oncologist. The

radiation oncologist felt Patient #2 was a good candidate for conservative management (lumpectomy), but the patient opted for mastectomy.

b. In November 2003, Patient #2 had a left modified radical mastectomy. Respondent's pathology report on the surgical specimens stated focal residual ductal carcinoma in-situ, mixed solid and cribriform variants, eight axillary lymph nodes plus one additional lymph node, benign reactive. In December 2003, Patient #2 consulted an oncologist, who recommended Tamoxifen or Arimidex as a preventative for recurrence of breast cancer. The oncologist ordered an ERPR receptor assay, which was performed by Dr. Patrick Bogard at Agelent Health Care Laboratory in Corning, Iowa. Dr. Bogard found no evidence of definite duct carcinoma in-situ. Dr. Bogard performed ERPR receptor assay using blocks, not the slides used by Respondent. (Exhibits 3, 4, 12)

c. Respondent's slides were then sent to pathologist Dr. Soundararajan at Creighton Medical Laboratories. On January 21, 2004, Dr. Soundararajan reported her findings on the left breast biopsy as "Breast tissue with florid ductal hyperplasia and intraductal papilloma-no evidence of carcinoma identified." For the left breast and lymph nodes, mastectomy and axillary node dissection, Dr. Soundararajan found "Breast tissue with ductal hyperplasia, Biopsy site changes present, eighteen lymph nodes negative for carcinoma." Dr. Soundararajan added the following comment: "Florid hyperplasia and papillomas in the breast are difficult lesions on core biopsies in view of hypercellularity and sclerosed stroma mimicking invasive carcinoma. The presence of myoepithelical cells continuously around the hyperplastic cells are demonstrated by immunohistochemical stains." (Exhibit 12, pp. 76-77)

Peer Review

7. The Board referred the complaints concerning Patients 1 and 2 to a peer review committee consisting of two board-certified pathologists, each with significant experience with surgical and cytological pathology specimens. The peer reviewers independently reviewed a total of 71 microscopic glass slides for the two patients, based on the standard of care for a pathologist practicing surgical and cytological pathology in a laboratory in Iowa. They prepared a written report, ultimately concluding that the

interpretations rendered by Respondent reflect a "substantial lack of a routinely practiced knowledge base" and that Respondent's deficiency in knowledge base and skills pose a serious threat to patients.

a. With respect to Patient #1, the peer reviewers reviewed endocervical curettage and cervical biopsies performed on 10/22/97. Both peer reviewers disagreed with Respondent's interpretation of all three specimens and offered a different interpretation. Both peer reviewers would have recommended that the attending clinician further evaluate the cervix and endocervix by obtaining additional tissue from these areas to assess the extent of the lesion present. Both peer reviewers concluded that Respondent failed to meet the standard of care for pathology practice. They concluded that Respondent lacked the knowledge to recognize the pattern of the histologic and cytologic features of glandular dysplasia and therefore was unable to inform the clinician in a knowledgeable way about the extent and nature of the patient's diagnosis.

The peer reviewers also disagreed with Respondent's interpretation of the endocervical curettage and cervical/endocervical biopsies that followed in 2001. Both interpreted the slides differently and concluded that Respondent failed to meet the standard of care by failing to recognize the salient features of dysplasia present on the microscopic slides. Both peer reviewers would have recommended further evaluation of the cervix and endocervix to possibly include Loop Electrosurgical Excision Procedure (LEEP) or cold knife conization with marginal assessment.

b. With respect to Patient #2, the peer reviewers both disagreed with Respondent's interpretation of the initial breast specimen as ductal carcinoma in situ (DCIS). Their interpretation was "Proliferative, non-atypical fibrocystic change with florid intraductal epithelial hyperplasia and intraductal papillomatosis (a benign diagnosis)." The peer reviewers concluded that Respondent lacks the knowledge to discern this benign lesion from the malignant lesion she reported of DCIS. The patient was subjected to a left mastectomy for DCIS and lost a breast and axillary tissue with nodes based on an incorrect malignant diagnosis. In the opinion of the peer reviewers, Respondent failed to meet the standard of care for a pathologist. (State Exhibits 24, 25)

Competency Evaluation

8. On April 27, 2006, the Board found probable cause to order Respondent to undergo a Board-approved confidential comprehensive clinical competency evaluation, pursuant to Iowa Code section 272C.9(1)(2005). Respondent submitted to an evaluation at the Center for Personalized Education for Physicians (CPEP) on July 20-21 and on September 8, 2006. The assessment included three clinical interviews with board certified pathologists based on review of anatomic pathology slides from the consultants' practices. The case selections were based on a description of Respondent's practice and pathology reports that she submitted from her practice. The evaluation addressed only Respondent's practice of anatomic pathology and evaluated medical knowledge, clinical reasoning, application of knowledge to practice, documentation, and communication. At the conclusion of the evaluation, CPEP prepared a detailed written report. (State Exhibits 28, 29)

9. CPEP concluded that overall, Respondent's knowledge is broad but superficial. Her clinical judgment and reasoning varied from good to poor. Her communication skills were effective. Her documentation in patient reports was adequate, with room for improvement. No health conditions were identified that should interfere with her practice, and her cognitive function screen was within normal limits.

In conclusion, CPEP recommends that Respondent participate in structured, individualized education to address the following identified areas of need:

Knowledge

- Overall ability to distinguish benign, premalignant and malignant lesions;
- Skin and soft tissue:
  - Overall familiarity in this area;
  - Malignant Melanoma;
  - Keratoacanthoma versus SCC;
  - Malignant sarcoma;
  - Leiomyosarcoma;
  - Lipoma versus liposarcoma;
- Head and neck;
  - Overall familiarity in this area;
  - Lingual tonsil;
  - Wegener's granulomatosis;

  - Small cell carcinoma versus squamous cell carcinoma;
  - Salivary gland tumors;
- Bone: osteomyelitis
- Breast
  - Atypical ductal hyperplasia versus ductal carcinoma in situ;
  - Identification of invasion in breast cancer specimens;
- Germ cell tumors, including germinoma;
- Schwannoma;
- Gastrointestinal system;
  - Characteristics to differentiate between dysplasia and adenocarcinoma;
  - Infiltrating gastric carcinoma;
  - Hyperplastic colonic polyp;
- Prostate, atypia versus normal;
- Cervix:
  - HPV testing and clinical implications;
  - Adenocarcinoma in situ versus atypical squamous metaplasia;
- Uterus:
  - Overall familiarity in this area;
  - Sarcomas of the uterus;
  - Grading system for endometrial adenocarcinoma;
  - Distinguishing features of endometrial hyperplasia, atypia, and dysplasia.

Judgment

- Development of self-confidence;
- Minimize reliance on her colleagues and consultants, as appropriate;
- Logical decision-making in her practices.

CPEP further recommends:

- Supervised Clinical Experience: Respondent should participate in a clinical experience, either at a pathology lab with a higher volume or through an academic setting, to provide the necessary experience and support as she addresses the areas of demonstrated need.
- Educational Preceptor: Respondent should develop a relationship with an experienced educational preceptor in pathology involving regularly scheduled

meetings to review cases and documentation, discuss decisions related to those cases, review specific topics, and make plans for future learning.

- Continuing Medical Education and Self-Study: Respondent should engage in continuing medical education courses and self-study which include, but are not limited to, the topics indicated in areas of demonstrated need. (State Exhibit 29)

10. Respondent submitted a detailed ten-page response to the CPEP Assessment report. Respondent raises a number of criticisms of CPEP's approach and conclusions. In part, Respondent felt that CPEP's evaluation methods and approach was unfair or unrealistic. Respondent notes that all pathologists keep reference libraries, which they will consult in difficult or uncommon cases. Respondent felt the reviewers had unrealistic expectations for what information she should have memorized. Respondent felt that several of the cases used by the consulting pathologists were conditions or cases that she would never or only very rarely see in her rural practice. Respondent felt that she was not permitted to control the microscope (light, focus, time spent) sufficiently to allow her to perform well during the evaluation. Respondent felt that her inclination to obtain second opinions from colleagues was unfairly characterized as indecision or lack of confidence. (State Exhibit 29; Testimony of Respondent)

Opinions of Respondent's Colleagues and Expert Witness

11. Dr. Ken Ford, a board certified pathologist practicing in Denton, Texas, is part of Respondent's 11-member pathology group. All high-risk biopsies (e.g., G.I., lymph node, breast, prostate, pigmented skin lesions, and cervical) are reviewed by a second pathologist in the group. Most of the group's pathologists have at least one colleague at the same location. Although Respondent is the only pathologist located at Jackson Community Memorial Hospital in Altus, she is able to obtain second opinions by submitting slides electronically to other pathologists in the group. Dr. Ford estimates that since Respondent joined their group in March 2006, he and his colleagues have reviewed approximately 500 of Respondent's cases without any significant discrepancies in their findings, aside from some differences in the terminology used. Dr. Ford has not reviewed the charges pending against Respondent in Iowa and has not reviewed CPEP's report. He is not familiar with

the details of the malpractice case involving Patient #2. (Testimony of Dr. Ken Ford; Respondent)

12. Dr. Thomas Mulhollan, a board certified pathologist located in Ardmore, Oklahoma, is also part of Respondent's practice group. Dr. Mulhollan has worked with Respondent on occasion to provide a second opinion or review her work, as part of the practice's automatic review process. Dr. Mulhollan has not needed to change or modify any diagnosis made by Respondent. In his opinion, Respondent is very well qualified to perform the pathology activities required of her in a rural Oklahoma practice. Dr. Mulhollan has not reviewed any of the documents in this disciplinary action. (Testimony of Dr. Thomas Mulhollan; State Exhibit 27)

Dr. Melanie Kahn, M.D. and Joy Snell, M.D., are also members of Affiliated Pathologists, P.A. Respondent has also provided locum tenens coverage for Dr. Snell's pathology practice. Both have provided letters of recommendation for Respondent. (Respondent Exhibit E; State Exhibit 27)

13. Dr. J. Frederick Hall performs general surgical pathology work at a hospital in northern Minnesota. Respondent has performed locum tenens work at the hospital, substituting for Dr. Hall or his partner. In Dr. Hall's opinion, Respondent is one of the best locum tenens that the hospital has used. He has heard no complaints concerning her work. (Testimony of Dr. J. Frederick Hall; State Exhibit 26)

14. Dr. Valarie Campbell, M.D. is board certified in anatomic and clinical pathology. For the past five years, Dr. Campbell has been part of a large pathology group in Des Moines that provides pathology services to hospitals in Des Moines and throughout central Iowa. After Respondent left Creston, Dr. Campbell's group took over pathology services for Greater Community Hospital in Creston, Iowa. Dr. Campbell has recently left her pathology group and will be have a solo pathology practice at Grinnell Regional Hospital.

Dr. Campbell reviewed the Peer Review Report, the CPEP Report and Respondent's written response, and the slides for Respondent's pathology cases for Patients 1 and 2.

a. Dr. Campbell disagrees with the peer review's criticisms of Respondent's findings regarding Patient #1's 1997 endocervical and curettage and cervical biopsies. Dr. Campbell testified that in retrospect, endocervical dysplasia was present, but that this was an evolving diagnosis that was not better understood until the last decade. According to Dr. Campbell, in 1997 this type of lesion was rare, not well-defined, and easily missed. She would have agreed with Respondent's findings at Exhibit 22, p. 48 but would have added "atypical endocervical cells" to paragraph 3 under the microscopic findings. Dr. Campbell testified that diagnosis of cervical glandular cells remains a nebulous area and that it is pretty common for pathologists to miss the diagnosis.

b. With respect to Patient #2, Dr. Campbell felt that it was a very difficult case because the tissue was "very cellular and busy." Dr. Campbell would have deferred to a consultant. Dr. Campbell agreed that Respondent's initial diagnosis affected the patient's decision making in this case. Dr. Campbell viewed this as an error in interpretation.

c. Dr. Campbell found the CPEP evaluation report "alarming." In her opinion, it was clear that the pathologist reviewers used by CPEP had no knowledge of rural Iowa pathology practice. She felt that several of the specimens were uncommon and would never be excised in rural Iowa. Even in Des Moines, Dr. Campbell would have asked for consultation on some of the specimens. In addition, Dr. Campbell knows of no pathologist who has not made at least one major error. She felt it was unfair to discipline Respondent based on the errors in the cases of the two patients. She further felt that a lot of the reviewers' criticisms were matters of semantics that depended upon where the physician received his or her training. In Dr. Campbell's opinion, the CPEP recommendations are unreasonable. (Testimony of Valarie Campbell, M.D.)

CONCLUSIONS OF LAW

Respondent is charged with professional incompetency, pursuant to Iowa Code section 147.55(2), 148.6(2)(g) and (i), 272C.10(2)(2005) and 653 IAC 23.1(2)"c" "d", "e" and "f."

Iowa Code section 147.55(2) provides that a license to practice a profession shall be revoked or suspended when the licensee is guilty of professional incompetency.

Iowa Code section 272C.10(2) provides that a licensing board shall by rule include provisions for the revocation or suspension of a license for professional incompetency.

Iowa Code section 148.6 provides in relevant part:

> **148.6 Revocation.**
>
> 2. Pursuant to this section, the board of medical examiners may discipline a licensee who is guilty of any of the following acts or offenses:
> ...
> g. Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery, or osteopathy in which proceeding actual injury to a patient need not be established;...
> ...
> i. Willful or repeated violation of lawful rules or regulation adopted by the board...

653 IAC 23.1 provides in relevant part:

> **653-23.1(272C) Grounds for discipline.** The board has authority to discipline for any violation of Iowa Code chapter 147, 148,...272C or the rules promulgated thereunder. The grounds for discipline apply to physicians...The board may impose any of the disciplinary sanctions set forth in rule 12.25(1), including civil penalties in an amount not to exceed $10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:
> ...
> **23.1(2)** Professional incompetency. Professional incompetency includes, but is not limited to, any of the following:
> ...

c. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;

d. A substantial deviation by the physician from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;

e. A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances.

f. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery, or osteopathy in the state of Iowa.

The preponderance of the evidence established that Respondent has violated Iowa Code sections 147.55(2), 148.6(2)(g), 272C.10(2)(2005) and 653 IAC 23.1(2)(c) and (d). As supported by the findings of five board-certified pathologists (two peer reviewers and three physician reviewers at CPEP), Respondent has demonstrated a substantial lack of knowledge or ability to discharge professional obligations with the scope of her practice and has substantially deviated from the standards of learning and skill ordinarily possessed and applied by other physicians and surgeons in the state of Iowa acting in the same or similar circumstances.

Several pathologists who are or have been colleagues of Respondent provided testimony and/or letters expressing their confidence in Respondent's professional knowledge and abilities. However, none of the colleagues have reviewed the two specific cases that prompted Respondent's referral to CPEP, nor have they reviewed the CPEP assessment report. Dr. Campbell did review the cases involving Patients 1 and 2 and the CPEP report. The majority of Dr. Campbell's disagreements with the peer review report concerned their criticism of Respondent's 1997 pathology report for Patient #1. However, even assuming that Dr. Campbell is correct and that endocervical gland dysplasia was not a widely used or

developed diagnosis in 1997, Dr. Campbell conceded that she would not have used the same description as Respondent and would have described the endocervical cells as atypical. With respect to Patient #2, Dr. Campbell did not agree with Respondent's approach. Rather, Dr. Campbell testified that it was a very difficult case, that further tissue should have been obtained, and that she would have sent it out to a consultant.

Dr. Campbell primarily criticized the CPEP evaluation and report because she felt that Respondent was presented with too many types of cases that she would not ordinarily see in a rural practice and because the reviewers unfairly criticized Respondent when she indicated that she would ask for a consultation in a particular case. However, as stated in the report, the reviewer's case selections were made based on a description of Respondent's practice and on the pathology reports that Respondent submitted from her practice. (State Exhibit 29, pp. 2, 4; Exhibit 30)

A careful review of the CPEP report reveals that the reviewers did consider the frequency with which Respondent may encounter certain types of cases. The reviewers approved of consulting textbooks or other reference materials and making referrals to consultants in appropriate cases. Based on its review of the entire record, the panel believed that the opinions of three practicing pathologists who spent a number of days reviewing cases with Respondent at CPEP, combined with the opinions of the two Iowa peer reviewers, were entitled to substantially more weight than the opinions expressed by Dr. Campbell.

CPEP and the peer reviewers appropriately expected Respondent to be able to demonstrate the general fund of knowledge and appropriate clinical judgment and reasoning expected of a pathologist, regardless of the location where she was practicing. See Estate of Hagedorn v. Peterson, 690 N.W.2d 84, 89 (Iowa 2004) (noting that although the availability of medical knowledge has become more universal across the United States, the "locality rule has retained validity in its other aspects, i.e. "facilities, personnel, services, and equipment reasonably available to the physician continue to be circumstances relevant to the appropriateness of the care rendered by the physician to the patient). CPEP's Assessment Report considered separate extensive clinical interviews by three practicing pathologists covering numerous individual cases. CPEP credited Respondent with a number of

correct diagnoses, including several that were difficult for a general pathologist. However, CPEP also found that Respondent demonstrated a lack of recognition of several classic examples of common pathology and an inadequate knowledge base for cases that would not typically be seen in her daily practice. CPEP further found that Respondent showed serious gaps in her knowledge and diagnostic skill when presented with cases of moderate complexity.

In order to address the concerns documented by the peer review report and the CPEP assessment report and in order to protect the public interest, Respondent must be restricted from practicing pathology in the state of Iowa until she successfully completes a remediation program that addresses the areas of need identified by CPEP. Respondent should be able to complete the remediation program described in this Decision and Order in Oklahoma if that is her choice, but the Iowa Board must monitor Respondent's progress and successful completion of the program.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondent Patricia Allen, D.O., is hereby **CITED** for failing to conform to the prevailing standard of care in her anatomic pathology practice in Iowa. Respondent is hereby **WARNED** that failure to conform to the prevailing standard of care in the future may result in further disciplinary action, including revocation of her Iowa medical license.

IT IS FURTHER ORDERED that Respondent Patricia Allen, D.O., will be **RESTRICTED** from practicing osteopathic medicine and surgery in the state of Iowa unless and until she completes the following remediation program:

A. **Monitoring Program:** Respondent shall contact Shantel Billington, Compliance Monitor, Iowa Board of Medical Examiners, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-3654 to establish a Board monitoring program. Respondent shall fully comply with all requirements of the monitoring program.

B. **Recommendations of CPEP and the Board:** Respondent shall submit, for Board approval, a formal educational plan designed for Respondent by CPEP to address all areas of demonstrated need identified in the assessment

and shall fully comply in completing the educational plan.

C. **Supervised Clinical Experience:** Respondent shall participate in a Board-approved supervised clinical experience to provide the necessary experience and support as she addresses the areas of demonstrated need. The supervised clinical experience shall be accomplished in a Board-approved pathology lab.

D. **Educational Preceptor:** Respondent shall participate in a Board-approved program with an experienced educational preceptor in pathology. Respondent shall meet regularly with the educational preceptor to review cases, review specific topics pertaining to the areas of demonstrated need, and engage in a quality improvement program.

E. **Continuing Medical Education and Self-Study:** Respondent shall engage in continuing medical education courses and self-study which include, but are not limited to, the topics indicated in the identified areas of demonstrated need.

F. **Quarterly Reports:** Respondent shall file sworn quarterly reports attesting to her compliance with all the terms of this Settlement Agreement. The reports shall be filed not later than 1/10, 4/10, 7/10, and 10/10 of each year of the remediation program.

G. **Board Appearances.** Respondent shall appear before the Board annually or upon request of the Board during the duration of this Order. Respondent shall be given reasonable notice of the date, time and location for the appearances.

H. **Monitoring Fee.** Respondent shall make a payment of $100 to the Board each quarter for the duration of this Order to cover the Board's monitoring expenses in this matter. The Monitoring Fee shall be received by the Board with each quarterly report required under this Order. The Monitoring Fee shall be sent to: Shantel Billington, Compliance Monitor Programs, Iowa Board of Medical Examiners, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medical Examiners. The Monitoring

Fee shall be considered repayment receipts as defined in Iowa Code section 8.2.

IT IS FURTHER ORDERED that Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Iowa.

IT IS FURTHER ORDERED that the restriction prohibiting Respondent from practicing osteopathic medicine and surgery in Iowa will be lifted when the Board determines that Respondent has successfully completed the remediation plan described herein.

IT IS FURTHER ORDERED, in accordance with 653 IAC 25.33, that Respondent shall pay a disciplinary hearing fee of $75.00. In addition, Respondent shall pay any costs certified by the executive director and reimbursable pursuant to subrule 25.33(3). All fees and costs shall be paid in the form of a check or money order payable to the state of Iowa and delivered to the department of public health, within thirty days of the issuance of a final decision.

Dated this 30th day of April, 2007.

THE PANEL:

Yasyn Lee, M.D.
Chairperson

Siroos Shirazi, M.D.

Paul Thurlow, Public Member

A proposed decision may be appealed to the board by either party by serving on the executive director, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision on the appealing party. 653 IAC 25.24(2)(c).

cc: Theresa O'Connell Weeg
Office of the Attorney General
Hoover Building
Des Moines, Iowa 50319

Michael Sellers
One Corporate Place
1501 42nd St., Suite 380
West Des Moines, IA 50266-1005

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST	)	FILE NO. 03-02-003, 03-04-149
	)	CASE NO. 06DPHMB030
PATRICIA A. ALLEN, D.O. RESPONDENT	)	RULING DENYING RESPONDENT'S MOTION FOR CONTINUANCE

On December 26, 2006, the Iowa Board of Medical Examiners (Board) filed a Statement of Charges against Patricia A. Allen, D.O. (Respondent) alleging professional incompetency. Respondent is currently practicing as a pathologist in Oklahoma. The initial hearing date of February 7, 2007 was continued at Respondent's request, over the state's objection. The continuance was granted to allow Respondent's counsel additional time to prepare for hearing. On February 8, 2007, the Board issued a Hearing Order rescheduling the hearing for March 27, 2007 at noon. On March 23, 2007, Respondent filed a second continuance motion. The state filed a resistance on March 23, 2007, and the Board delegated ruling on the Motion for Continuance to the undersigned administrative law judge.

Respondent's attorney states that the continuance motion is untimely[1] due to circumstances beyond his control. The parties' filings reveal the following information: Respondent's expert witness is a board-certified pathologist, who is currently employed as an assistant state medical examiner with the Iowa Department of Public Health. The expert witness has apparently been working as a private consultant on Respondent's case for approximately one month, on her own time. On March 21, 2007, Respondent's attorney disclosed the name of the expert witness to the state's attorney, who recognized that the expert was a state employee.[2] The state's attorney advised Respondent's attorney that the prohibitions of Iowa Code section 68B.6[3] were

[1] 653 IAC 25.16 provides that no continuance shall be granted within seven days of the date of the hearing except for extraordinary, extenuating or emergency circumstances. 653 IAC 25.16(1)"a" provides that a written application for continuance shall be made at the earliest possible time and no less than seven days before the hearing except in case of anticipated emergencies.

[2] The state's attorney asserts that this was a late response to her discovery request.

[3] Iowa Code section 68B.6 prohibits state employees from entering into any agreement for compensation for the appearance or rendition of services by

implicated. Respondent's attorney reports that the expert witness has been unsuccessful in obtaining permission from her employer to appear as a witness in the case, although the statute does not appear to give employers discretion to waive its provisions.

653 IAC 25.16(2) provides that in determining whether to grant a continuance, the presiding officer may consider prior continuances, the interests of all the parties, the public interest, the likelihood of informal settlement, the existence of an emergency, any objection, any applicable time requirements, the existence of a conflict in the schedules of counsel, parties, or witnesses, the timeliness of the request, and other relevant factors.

Respondent requests a second continuance, this time to allow an opportunity to retain a new expert witness. However, the continuance request is untimely and the circumstances were not outside Respondent's control. Respondent and the expert witness should have earlier identified the statutory prohibition. As stated in the prior ruling, there is a significant public interest in the prompt resolution of this disciplinary proceeding, regardless of whether Respondent is practicing in this state or another state. IT IS THEREFORE ORDERED that the Motion to Continue is hereby DENIED.

Dated this 23rd day of March, 2007.

Margaret LaMarche

Margaret LaMarche
Administrative Law Judge
Department of Inspections and Appeals
Lucas State Office Building-Third Floor
Des Moines, Iowa 50319-0083

cc: Theresa O'Connell Weeg
Office of the Attorney General
Hoover Building
Des Moines, Iowa 50319
and by email: tweeg@ag.state.ia.us

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that person against the interest of the state in relation to any case, proceeding, application, or other matter before any state agency...

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BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST	)	FILE NO. 03-02-003, 03-04-149
	)	CASE NO. 06DPHMB030
	)	
PATRICIA A. ALLEN, D.O. RESPONDENT	)	RULING GRANTING RESPONDENT'S MOTION FOR CONTINUANCE

On December 26, 2006, the Iowa Board of Medical Examiners (Board) filed a Statement of Charges against Patricia A. Allen, D.O. (Respondent) alleging professional incompetency and scheduling a hearing for February 7, 2007 at 8:30 a.m. On January 3, 2006, Respondent's counsel filed an informal request for continuance with the Board's Director of Legal Compliance. On January 10, 2007, Respondent's counsel was advised that he would have to file a Motion for Continuance, pursuant to the Board's rules.

Respondent's counsel filed a Motion for Continuance on January 22, 2007, stating that he had recently undertaken representation of Respondent and had not had adequate opportunity to review the volume of documents or procure an expert opinion. Respondent's counsel also notes that he and the state's counsel have a deposition scheduled in Iowa City the afternoon of the hearing and questions whether there is adequate time to complete the hearing on February 7, 2007. Finally, Respondent's counsel asserts that the public interest in an immediate hearing is reduced because Respondent is practicing in Oklahoma and has no plans to return to Iowa in the foreseeable future.

The state filed a Resistance to Motion for Continuance on January 25, 2007, stating that Respondent has had more than a year to identify and address the Board's concerns and obtain an expert witness because Respondent and the Board have been negotiating the possibility of a Combined Statement of Charges and Settlement Agreement since early in 2006. The state further asserts that there is a grave risk to the public since the Statement of Charges alleges serious competency concerns and Respondent is actively practicing medicine. Finally, the state asserts that the attorneys took the scheduled hearing into consideration when the deposition was scheduled, and the hearing can be continued if it is not completed in the available time.

On January 25, 2007, the Board delegated ruling on the Motion for Continuance to the undersigned administrative law judge. The Motion for Continuance is timely. 653 IAC 25.16(1)"a." 653 IAC 25.16(2) provides that in determining whether to grant a continuance, the presiding officer may consider prior continuances, the interests of all the parties, the public interest, the likelihood of informal settlement, the existence of an emergency, any objection, any applicable time requirements, the existence of a conflict in the schedules of counsel, parties, or witnesses, the timeliness of the request, and other relevant factors.

Respondent's counsel has provided sufficient grounds to justify a continuance. While Respondent has had notice of the issues for some time, the Statement of Charges was not filed until December 26, 2006, and it does not appear that Respondent was represented by counsel until recently. Given the nature and seriousness of the charges, Respondent's counsel should be allowed additional time to review the file and prepare for hearing. However, since Respondent continues to practice medicine in the interim, there is a strong public interest in holding the hearing and resolving the Statement of Charges in a prompt manner. The fact that Respondent practices medicine in another state does not diminish the public interest. IT IS THEREFORE ORDERED that the Motion to Continue is hereby GRANTED.

Dated this 26th day of January, 2007.

Margaret LaMarche
Administrative Law Judge
Department of Inspections and Appeals
Lucas State Office Building-Third Floor
Des Moines, Iowa 50319-0083

cc: Theresa O'Connell Weeg
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BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST	)	**FILE Nos. 03-02-003 & 03-04-149**
PATRICIA A. ALLEN, D.O., RESPONDENT.	)	**STATEMENT OF CHARGES**

COMES NOW the Iowa Board of Medical Examiners on December 26, 2006, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license no. 02900 on November 3, 1994. Respondent's Iowa medical license is active and will next expire on March 1, 2008.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on February 7, 2007, before the Iowa Board of Medical Examiners. The hearing shall begin at 8:30 a.m. and shall be located in the conference room at the Iowa Board of Medical Examiners office at 400 SW 8th Street, Suite C, Des Moines, Iowa.

2. Answer. Within twenty (20) days of the date you are served this Statement of Charges you are required by 653 Iowa Administrative Code 24.2(5)(d) to file an Answer. In that Answer, you should state whether you will require a continuance of the date and time of the hearing.

3. Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on prehearing matters, and be present to assist and advise the board at hearing.

4. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 653 Iowa Administrative Code Chapter 25. At hearing, you will be allowed the opportunity to respond to the charges against you. to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. If you need to request an alternative time or date for hearing, you must review the requirements in 653 Iowa Administrative Code 25.16. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

5. Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address: Theresa O'Connell Weeg, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

6. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You should direct any questions to Kent M. Nebel, J.D., the Board's Legal Director at 515-281-7088 or to Assistant Attorney General Theresa O'Connell Weeg at 515-281-6858.

B. LEGAL AUTHORITY AND JURISDICTION

7. Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 147, 148, and 272C (2005).

8. Legal Authority: If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 148, and 272C (2005) and 653 Iowa Administrative Code Chapter 25.

9. Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 653 Iowa Administrative Code 25.20.

C. SECTIONS OF STATUTES AND RULES INVOLVED

COUNT I

10. Respondent is charged with professional incompetency pursuant to Iowa Code section 147.55(2), 148.6(2)(g) and (i), and 272C.10(2) (2005), and 653 IAC sections 23.1(2)(c), (d), (e), and (f), by demonstrating one or more of the following:

A. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;

B. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;

C. A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances; and

D. A willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery in Iowa.

D. STATEMENT OF MATTERS ASSERTED

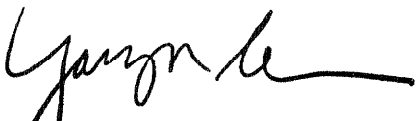
11. A short and plain Statement of the Matters Asserted was reviewed and approved by the Board at the time this Statement of Charges was filed. A Statement of the Matters Asserted shall be furnished to Respondent as an attachment to this Statement of Charges. However, the Statement of the Matters Asserted is not a public record at the time of this filing. The Statement of Matters Asserted shall become a public record upon final resolution of this matter.

E. SETTLEMENT

12. Settlement. This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 653 Iowa Administrative Code 25. If you are interested in pursuing settlement of this matter, please contact Kent M. Nebel, J.D., Legal Director at 515-281-7088.

F. PROBABLE CAUSE FINDING

13. On this 26th day of December 2006, the Iowa Board of Medical Examiners found probable cause to file this Statement of Charges.



Yasyn Lee, M.D., Chairperson
Iowa Board of Medical Examiners
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